

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Miriam Lynch	Team: Squad #9	CCRB Case #: 201803636	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 05/06/2018 10:09 PM	Location of Incident: Prospect Place between Kingston Avenue and Albany Avenue	Precinct: 77	18 Mo. SOL 11/6/2019	EO SOL 11/6/2019	
Date/Time CV Reported Sun, 05/06/2018 11:07 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 05/06/2018 11:07 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Darion Francis	20199	954823	077 PCT
2. SGT Gabriel Cuevas	02226	945633	077 PCT
3. POF Lisbeth Colon	16399	954656	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Darion Francis	Abuse: Police Officer Darion Francis stopped § 87(2)(b)	
B.POM Darion Francis	Abuse: Police Officer Darion Francis frisked § 87(2)(b)	
C.POM Darion Francis	Abuse: Police Officer Darion Francis searched § 87(2)(b)	
D.POM Darion Francis	Abuse: Police Officer Darion Francis refused to provide his shield number to § 87(2)(b)	
E.POF Lisbeth Colon	Abuse: Police Officer Lisbeth Colon refused to provide her shield number to § 87(2)(b)	
F.SGT Gabriel Cuevas	Abuse: Sergeant Gabriel Cuevas refused to provide his shield number to § 87(2)(b)	
G.SGT Gabriel Cuevas	Off. Language: Gabriel Cuevas made remarks to § 87(2)(b) based upon his gender.	
H.SGT Gabriel Cuevas	Off. Language: Gabriel Cuevas made remarks to § 87(2)(b) based upon his perceived sexual orientation.	

Case Summary

On May 6, 2018, at approximately 10:09 p.m. § 87(2)(b) was walking on Prospect Place between Albany and Kingston Avenues in Brooklyn. § 87(2)(b) was stopped by PO Darion Francis (**Allegation A: Abuse of Authority**-§ 87(2)(g) then of the 77th Precinct, who was also accompanied by PO Lisbeth Colon and Sgt. Gabriel Cuevas, also of the 77th Precinct. PO Francis frisked and allegedly searched § 87(2)(b) (**Allegation B: Abuse of Authority**-§ 87(2)(g) **Allegation C: Abuse of Authority**-§ 87(2)(g) PO Francis, PO Colon, and Sgt. Cuevas allegedly refused to provide their shield numbers upon request (**Allegation D: Abuse of Authority**-§ 87(2)(g) **Allegation E: Abuse of Authority**-§ 87(2)(g) **Allegation F Abuse of Authority**-§ 87(2)(g) Before the officers left the scene, Sgt. Cuevas allegedly called § 87(2)(b) a “bitch” and a “faggot” (**Allegation G: Offensive Language**-§ 87(2)(g) **Allegation H: Offensive Language**-§ 87(2)(g)

§ 87(2)(b) was not arrested, issued a summons, or injured as a result of this incident.

No video footage exists for this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Darion Francis stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Darion Francis frisked § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Darion Francis searched § 87(2)(b)

It is undisputed that § 87(2)(b) was walking near the intersection of Prospect Place and Albany Avenue, on the north side of Prospect Place when PO Francis saw and stopped him. It is undisputed that § 87(2)(b) was, at the time, wearing a black jacket and a red shirt with at least one pocket at the bottom of the shirt. It is undisputed that § 87(2)(b) was carrying a cellphone in one of his pockets. § 87(2)(g)

§ 87(2)(b) stated that at the time, he was patrolling § 87(2)(b)

He said that his jacket was emblazoned with the § 87(2)(b) logo at the time. When he saw the officers’ vehicle, he looked at it, and then continued to walk on Prospect Place, when the officers left their vehicle and stopped him (Board Review 01).

In his initial online complaint, § 87(2)(b) stated that he was frisked by PO Francis (Board Review 02). When contacted by phone, he clarified that PO Francis had not in fact frisked him, but had searched each of the pockets on his person. He reiterated that PO Francis searched each of his pockets in his in-person statement (Board Review 03).

PO Francis also testified that § 87(2)(b) looked at the officers in their vehicle before he was stopped. PO Francis said that when § 87(2)(b) looked at the officers, he changed direction and placed his hand in his shirt pocket, which had a square, seven- to eight-inch bulge in it. PO Francis described the item as “an undefined bulge.” PO Francis stated that he observed § 87(2)(b) place his hand in his pocket, which PO Francis believed was done to secure a firearm in case § 87(2)(b) needed to run. PO Francis did not provide any additional reasons for stopping and frisking § 87(2)(b)

PO Francis stated that he frisked the pocket where he believed that § 87(2)(b) was holding the cellphone, and made no further intrusion, frisk or search, onto or into § 87(2)(b)

clothing. He stated that § 87(2)(b) removed his own cellphone from his pocket (Board Review 04).

Sgt. Cuevas testified that PO Francis drew his attention to § 87(2)(b) and told him that § 87(2)(b) had a bulge in his waistband. He stated that PO Francis made the decision to stop § 87(2)(b) and that he approached § 87(2)(b) with PO Francis. Sgt. Cuevas stated that once he approached § 87(2)(b) he saw a bulge in his waistband, the shape and size of which he could not describe, but that reminded him of a firearm because § 87(2)(b) carried it in his waistband (Board Review 05).

PO Colon remembered that PO Francis said that § 87(2)(b) carried an item that created a bulge on his person, but she did not at the time observe the bulge.

PO Colon did not remember whether PO Francis frisked or searched § 87(2)(b) Sgt. Cuevas remembered that PO Francis frisked § 87(2)(b) but did not remember if he searched him (Board Review 06).

The UF-250, prepared by PO Francis, indicated that he stopped § 87(2)(b) after seeing § 87(2)(b) look at officers several times while adjusting a bulge in his front pocket. It said both that § 87(2)(b) was frisked and that a cellphone was removed from his pocket. It did not indicate how or by whom. A search of § 87(2)(b) person was not recorded in the UF-250 (Board Review 07).

People v. Stevenson 7 A.D. 3d 820 (2004) clarifies that an officer in an unmarked vehicle who sees a bulge of equivocal substance that is “readily susceptible of an innocent as well as a guilty explanation,” lacks the reasonable suspicion required to “forcibly detain or frisk” an individual (Board Review 08). People v. Shutler 98 A.D. 3d 695 (2012) further restricts reasonable suspicion that someone is armed to observations of bulges that specifically resemble weapons, and not items that could be used to improvise weapons (Board Review 09).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (D) Abuse of Authority: Police Officer Darion Francis refused to provide his shield number to § 87(2)(b)

Allegation (E) Abuse of Authority: Police Officer Lizbeth Colon refused to provide her shield number to § 87(2)(b)

Allegation (F) Abuse of Authority: Sergeant Gabriel Cuevas refused to provide shield number to § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) said in his phone statement and his in-person interview that he requested the shield number of each officer present (Board Reviews 1 and 3). He also stated that the response when he asked was Sgt. Cuevas telling him to go home (Board Review 1).

PO Francis testified that § 87(2)(b) never requested his name or his shield number, and that he never provided them. PO Colon did not remember § 87(2)(b) requesting a name or a shield number, and she did not remember providing her name or shield number (Board Reviews 4 and 6).

Sgt. Cuevas § 87(2)(g) remembered § 87(2)(b) requesting the officers' shield numbers, and he remembered each officer, including himself, providing this information (Board Review 05).

According to Patrol Guide Procedure 203-09, officers must provide their name, shield number, rank, and command when members of the public request them (Board Review 10).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (G) Offensive Language: Sergeant Gabriel Cuevas made remarks to § 87(2)(b) based on gender.

Allegation (H) Offensive Language: Sergeant Gabriel Cuevas made remarks to § 87(2)(b) based on his perceived sexual orientation.

It is not in dispute that § 87(2)(b) became angry during his stop, and that he raised his voice at the end of the stop. § 87(2)(g)

§ 87(2)(b) stated that he was yelling at the officers at the end of the stop, and that his voice cracked as he was speaking to them. He said that Sgt. Cuevas remarked on his voice breaking, and then called § 87(2)(b) a "bitch" and a "faggot." § 87(2)(b) told him that Sgt. Cuevas told him to go home (Board Review 1).

Sgt. Cuevas recalled telling § 87(2)(b) to go home, but he did not remember whether he called § 87(2)(b) a “bitch” or a “faggot” (Board Review 5). Neither PO Francis nor PO Colon recalled Sgt. Cuevas interacting with § 87(2)(b) at all, and they did not remember him calling § 87(2)(b) a “bitch” or a “faggot” (Board Reviews 4 and 6).

The UF-250 prepared for this incident recorded § 87(2)(b) as saying, “Patrol these streets without a gun if you are so tough,” but did not include any additional details about the verbal interaction between § 87(2)(b) and the officers (Board Review 7).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 11).
- PO Francis has been a member of service for four years. He has been a subject in two prior CCRB complaints, with six prior allegations. One of these complaints, 201801781, involving force allegations is still pending investigation. None of the remaining allegations has been substantiated (Board Review 12).
 - § 87(2)(g)
- Sgt. Cuevas has been a member of service for 10 years. He has been a subject in five prior CCRB complaints, with 11 prior allegations, of which three allegations were substantiated. One of these prior complaints, 201801781 is still pending investigation. A subsequent complaint, 201804454, is also still pending investigation (Board Review 12).
 - Case 201610447 involved allegations of stop, frisk, and refusal to provide name and shield number allegations. The Board recommended Command Discipline B and the NYPD imposed Command Discipline A.
 - § 87(2)(g)
- This is the first CCRB complaint to which PO Colon has been named a subject.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this case (Board Review 01).
- As of July 3, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident (Board Review 13).

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad #9

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date